



Yellowstone County Zoning Commission Minutes for the Meeting of Monday December 12, 2005

The County Zoning Commission met on Monday December 12, 2005 in the large conference room on the 4th floor of the Parmly Library, 510 North Broadway.

Oscar Heinrich, Chairman, called the meeting to order at 4:02 p.m.

Commissioners and Staff		1/10/05	2/14/05	3/14/05	4/11/05	5/9/05	6/13/05	7/11/05	8/8/05	9/12/05	10/10/05	11/14/05	12/12/05
Oscar Heinrich	Chairman	CANCELLED	1	1	CANCELLED	1	1	CANCELLED	1	1	1	1	1
Jerome Musselman	Vice-Chair		1	1		1	1		1	1	1	1	1
Al Littler	Commissioner		1	1		1	1		1	1	1	1	1
Joan Hurdle	Commissioner		1	1		1	1		1	1	1	1	1
Dennis Cook	Commissioner		1	1		1	1		1	1	1	1	1
Nicole Cromwell	Planner II/ Zoning Coordinator		1	1		1	1		1	1	1	1	1
Wyeth Friday	Planner II		1	-		1	1		1	1	-	1	1
Elizabeth Allen	Planning Clerk		1	1		1	1		1	1	1	1	1

Chairman Heinrich introduced the County Zoning Commission members and staff in attendance:

Nicole Cromwell, Planner II/Zoning Coordinator
Lora Mattox, Planner II
Wyeth Friday, Planner II
Cynthia Wilson, Planner I
Elizabeth Allen, Planning Clerk

ANNOUNCEMENTS:

There were none.

Approval of Minutes:

On a motion passed with a 5-0 voice vote, the minutes of October 11, 2005 were approved with the following changes: on page 5, change spelling of "Mick Gainan", on page 12

Commissioner Hurdle needs clarification on why the property is exempt from landscaping. Mr. Friday clarified.

On a motion passed with a 5-0 voice vote, the minutes of November 14, 2005 were approved.

Public Hearings:

Chairman Heinrich reviewed the rules for the procedure by which the public hearings will be conducted. He said the applications heard at this meeting would be forwarded to the BOCC at their meeting of **December 27, 2005**.

Item 1: Zone Change #587

Ms. Cromwell read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property. She said staff is forwarding a recommendation of denial. She explained the reasons for the staff decision.

REQUEST

This is a zone change request from Residential-15,000 to Controlled Industrial on Lots 110 and 115 of Sunny Cove Fruit Farms. The two lots comprise a 20 acre parcel of land half of which is currently used for wrecked vehicle storage by A-1 Johnson Auto Wrecking. The property is located at 6801 Grand Avenue. The Planning staff is forwarding a recommendation of denial for this application.

APPLICATION DATA

OWNER:	Keith, Curtis and Karen Johnson
APPLICANT:	same
LEGAL DESCRIPTION:	Lots 110 and 115, Sunny Cove Fruit Farms
ADDRESS:	6801 Grand Avenue (aka 6767 Grand Avenue)
CURRENT ZONING:	Residential-15,000
PROPOSED ZONING:	Controlled Industrial
EXISTING LAND USE:	Vacant (Lot 110) and auto wrecking yard (Lot 115)
SIZE OF PARCEL:	20 acres

APPLICABLE ZONING HISTORY

None – Lots 115 and 110 have the original zoning designation of R-15,000. This designation has been in place since May of 1973.

CONCURRENT APPLICATIONS

Special Review (#301) request to allow an auto wrecking facility on Lots 110 and 115

SURROUNDING LAND USE & ZONING

NORTH:	Zoning:	Residential-15,000
	Land Use:	Agricultural and large lot residential

SOUTH:	Zoning:	Agriculture Open Space – No Zoning
	Land Use:	Agriculture, Commercial warehouses
EAST:	Zoning:	Residential-15,000
	Land Use:	Agriculture
WEST:	Zoning:	No zoning
	Land Use:	B&B Telecable

REASONS

This is a zone change request from Residential-15,000 to Controlled Industrial on Lots 110 and 115 of Sunny Cove Fruit Farms. Lot 110, a 10 acre parcel, was recently purchased by A-1 Auto Wrecking to expand their storage area from the existing 30 acre auto wrecking yard. Twenty acres of the existing 30 acre business is located outside the zoning jurisdiction of Yellowstone County. Lot 115, with frontage on Grand Avenue, is zoned Residential-15,000 and has been in use as an auto wrecking yard for approximately 50 years. The property address is 6801 Grand Avenue.

A-1 Johnson Auto Wrecking is a well run facility and has submitted letters of support from surrounding property owners. The purpose of the zoning request is to allow the applicants to expand the existing auto wrecking yard from Lots 111, 114A and 115 (~ 30 acres) to include Lot 110 (a 10-acre lot) to the north of Lot 115. This application was the result of a complaint from an adjacent land owner who was concerned about the possible expansion of the wrecking yard. Several large lot residential subdivisions have been platted within the immediate area in the past two years. A-1 Johnson Auto Wrecking was notified of the zoning of Lot 110 (R-15,000) and the need to apply for a zone change and special review in order to expand the existing auto wrecking yard.

The planning staff is forwarding a recommendation of denial on this application. There are several reasons for this recommendation based on our review of the Northwest Shiloh Area Plan, the West Billings Neighborhood Plan, the Growth Policy, the twelve review criteria for zone changes and Montana Supreme Court decisions concerning spot zoning. The primary concern with the zone change request is the high potential for spot zoning this area. All of the surrounding properties are zoned for low-density residential uses or agricultural uses. The Montana Supreme Court decision *Little v. Board of County Commissioners of Flathead County* (1981), 193 Mont. 334, 63` P. 2nd 1282) is the precedent case in this area of zoning law. The court set forth three factors that must be considered when determining whether a zone change is an illegal spot zone. The first consideration is whether the requested use is significantly different from the prevailing use in the area. The prevailing use in the area is agricultural and large lot residential although there are several commercial businesses south and west of the subject property. All of these commercial businesses exist outside the County's zoning jurisdiction and are businesses that have low potential for impact on the surrounding neighbors. Those businesses, including King Transfer & Storage, MT Uplink Television, Artistic Iron & Artistic Boats, the four warehouses across Grand Avenue, B & B Telecable, Juros Pharmacy Warehouse and Larson Apiaries, would be allowed uses within a Controlled Industrial (CI) zone. Although there are eleven businesses within the immediate area, the prevailing use of the area remains

primarily residential and agricultural. Expansion of the city limits and new subdivisions will only increase the use of the area for residential purposes. The second consideration is whether the area requested for the zone is small as it relates to the number of property owners that would benefit from the requested change rather than the acreage involved. The only property owner to benefit from this change will be the owners of A-1 Johnson Auto Wrecking. Property owners to the east and north would not benefit from the change and in fact may be subject to lowered property values. The third consideration is whether the requested change is in the nature of special legislation where only one or few landowners would benefit at the expense of surrounding property owners or the general public including how the requested change conforms or not with the adopted Growth Policy. The requested change is clearly designed to benefit a single property owner, possibly at the expense of surrounding property owners. The conformance with the adopted Growth Policy is discussed below in the twelve criteria.

The auto wrecking facility was in place when the original zoning of Residential-15,000 was placed on the property. The intent of the zoning regulations in the case of nonconforming uses is to eventually bring those parcels of land into conformance with the designated zoning districts. Nonconforming uses are allowed to continue so long as they are not expanded on to other lots or abandoned. The recommendation of denial will not affect the ability of A-1 Johnson Auto Wrecking from continuing their business on Lot 115. A denial of the zone change request will not allow them to expand on to the vacant Lot 110 directly north of Lot 115.

RECOMMENDATION

Denial

Discussion:

Chairman Heinrich asked Ms. Cromwell for a clarification on spot zoning.

Ms. Cromwell gave a brief presentation on spot zoning. She explained the 3 prong test. The first requirement is making sure the zoning fits with the surrounding zoning, i.e. residential to residential. The second is whether the property is small in relation to the surrounding properties. Although the parcel is large, 20 acres, it will only benefit a single property owner and may adversely affect the other surrounding property owners. The third test is whether this is special legislation, which will benefit a single property owner versus the surrounding properties.

Chairman Heinrich asked if the commission should be looking at area outside of the zoning jurisdiction.

Ms. Cromwell stated that they could look at the surrounding properties. She clarified the use of the surrounding properties, including warehouses. The A-1 Johnson auto wrecking was zoned R-15000 even though it was currently a wrecking facility.

Ms. Cromwell stated that there has been a petition of 41 names against this zone change; however the names have not been checked against property owners in the 300 ft radius.

Chairman Heinrich asked if there was anyone in attendance wishing to speak in favor of or in opposition to Zone Change #587.

Public hearing opened at 4:19 p.m.

Applicant:

Tom Llewellyn, 5815 Rimrock Road, stated that A-1 has been in business for 50 years. The BOCC did not zone this property differently because they never expected the city to grow this far west. This is not a spot zoning, this is to bring the property into conformance. The surrounding property owners were aware of the fact that A-1 wrecking was in the neighborhood when their property was purchased. This is one of the cleanest wrecking yards in the whole county. The owners of A-1 tried to fence off their property to be good neighbors and were informed at that time that they must apply for a zone change on their remaining property because it was not in conformance. The 41 name petition is comprised almost entirely of property owners outside of the 300 foot radius. The wrecking yard was there before this was residential when the surrounding property was purchased. He feels that this would bring the property into conformance and because of the size of the property he feels that this is not spot zoning. The use will be allowed to continue and they would like to be good neighbors and by bringing the property into conformance they would be allowed to put up a fence to screen the property.

Proponents:

Bruce Riderson, Vice President of Johnson Auto Wrecking, 11 West 52nd St, feels that Tom Llewellyn covered the issue very well. There are other commercial properties in the area. They are good neighbors who lend out equipment to neighbors, keep the property clean and weed free, have nice buildings and fencing and try generally to be good neighbors. They are trying to get this area into conformance. The properties to the north have even agreed to help pay the cost of the fence. The newer neighbors are the ones who are protesting this zone change, the neighbors who have been in the area for any length of time seem to have no problem with the zone change.

Margaret Anderson, 2930 Waldon Place, landowner to the east. They knew what was on the property when they purchased. They are within the 300 foot radius. They are not opposed to the zone change.

Neil Schlaeppli, 6606 Grand Ave, owns a farm to the south. He has owned the property for over 30 years. The A-1 facilities are clean and neat and A-1 have always been good neighbors. They also provide tax base for the county and jobs for the area.

Opponents:

Kim Christopherson, Pederson and Hardy, PC, 1001 S 24th St West, here on behalf of three landowners in the vicinity of the property. Steve and Deborah Ott, owners of Coldstone Sub, Stacie and Stacy Wilcox owners of Lot 1, Lamm Sub, Michelle and Stan Monson, owners of tract 3. Kim Christopherson presented a photo of the property and showed the land in relation to the petition that was submitted. Buying land next to a wrecking yard is one thing but the property owners have the right to have the underlying zoning stay the same. She also feels that this property being rezoned will only for on person, the owners of A-1. The three prong spot zoning also states that the Growth Policy should be given a good deal of weight. The surrounding land owners have spoken quite clearly. Rezoning this property will have a negative effect on surrounding properties because of machine noises, barking dogs and land use. The expansion of this property will not help the quality of life for the surrounding property owners. The growth policy has an objective to improve the quality of life of the residents and the quality and

appearance of the land. In the case *Bowellen vs. Great Falls* in 1995, land use must help the surrounding area. This would clearly be a case of spot zoning. The use is very different from the surrounding uses, the area is small and this is special legislation. This zone change will only benefit one owner and could negatively the surrounding property owners.

Chairman Heinrich asked why there is a zoning commission if the property owners have to be able to depend on current zoning.

Kim Christopherson stated that there are times when some flexibility is warranted, however that is not the case in this situation. The purchasers of property in this area have the right to purchase land in a residential setting and know that the surrounding uses will conform to that. Allowing this use to expand when the area is currently residential would not be correct.

Chairman Heinrich asked if the people that Ms. Christopherson represents were somehow misled when they purchased the property in this area because the A-1 wrecking was an existing use.

Ms. Christopherson responded that the people that she represents know that A-1 was an existing use, there is a large difference between an existing non-conforming use and allowing expansion of that use.

Commissioner Littler asked for clarification on whom Ms. Christopherson represents.

Debbie Ott, 3720 Ben Hogan, owner of Coldstone Estates, she is upset because when she purchased Coldstone Estates she was not told that the land would be developing in this way. She was not told that A-1 was planning on expanding and she feels betrayed by her realtor.

Michelle Munson, 1724 66th St West, lived at the area for over 20 years. She feels that they are good neighbors. The area that they are trying to expand to has always been pastureland. The land has now been purchased, and expanding the lot will bring the yard to within 320 feet of her backdoor. The house that they have built is nice and well taken care of and the wrecking yard was not a concern before they decided to expand. While she knows that A-1 are good neighbors she feels that the wrecking yard will now be too close to her property and will cause depreciation of her property values.

Rebuttal:

Tom Llewellyn, stated that when the land to the north was purchased the new owners sign rights of waiver to protest. He doesn't feel that this will hurt this property because they have still been having good sales of lots in the area. They will have some buffer on this land. The growth plan is an advisory document only. These people have been operating this property for more than 30 years. They would like to fence off this property so that they would have a better visual impact. He feels that it is very reasonable for them to be allowed to have this zone change so that they can square up there property.

Public hearing closed at 5:00 p.m.

Discussion:

Chairman Heinrich asked about the landing strip near the area.

Ms. Cromwell stated that it is both in and out of the zoning jurisdiction.

Commissioner Hurdle stated that she is sure that these are wonderful people and a wonderful business but she doesn't feel that allowing a zone change in this area would be the right thing to do, especially given the disparity of the two uses.

Commissioner Littler stated that later in the hearing they will be hearing a zone change to change from R-15000 to Ag-O. He feels that it is hard to approve one and deny another.

Commissioner Hurdle pointed out that the use is not being denied they are only denying the zone change. The current use would be allowed to continue.

Commissioner Musselman read from the packet. He read that A-1 will be allowed to continue there current use, however he would like to know if the point is to bring land into conformance than why they are trying to change.

Motion:

On a motion by Commissioner Hurdle, seconded by Commissioner Musselman and passed by a 3-2 voice vote with Commissioner Cook and Commissioner Littler voting against a recommendation of denial of Zone Change #587 will be forwarded to the BOCC on their meeting of December 27, 2005.

Item 2: Special Review #301:

Ms. Cromwell read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property. She said staff is forwarding a recommendation of denial. She explained the reasons for the staff decision.

REQUEST

This is a special review application to allow an auto wrecking facility and storage yard in a proposed Controlled Industrial zone at 6801 Grand Avenue. The property is located on Lots 110 and 115 of Sunny Cove Fruit Farms. Planning staff is recommending denial of this application. Action on this application is based on the approval of Zone Change #587 that is being heard by the Zoning Commission at this same meeting. The property must be zoned Controlled Industrial for this Special Review to be considered.

APPLICATION DATA

OWNER:	Keith, Curtis and Karen Johnson
APPLICANT:	same
LEGAL DESCRIPTION:	Lots 110 and 115, Sunny Cove Fruit Farms
ADDRESS:	6801 Grand Avenue (aka 6767 Grand Avenue)
CURRENT ZONING:	Residential-15,000(Zone Change #587 must be approved prior to action on this application)
PROPOSED ZONING:	Controlled Industrial
EXISTING LAND USE:	Auto wrecking yard (Lot 115) and vacant (Lot 110)
SIZE OF PARCEL:	20 acres

CONCURRENT APPLICATIONS

A Zone Change from Residential-15,000 to Controlled Industrial on the subject property.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: Residential-15,000

	Land Use:	Agricultural and large lot residential
SOUTH:	Zoning:	Agriculture Open Space – No Zoning
	Land Use:	Agriculture, Commercial warehouses
EAST:	Zoning:	Residential-15,000
	Land Use:	Agriculture
WEST:	Zoning:	No zoning
	Land Use:	B&B Telecable

REASONS

This is a special review to allow for the expansion of an existing auto wrecking yard – A-1 Johnson Auto Wrecking on a lot proposed to be zoned Controlled Industrial in the Sunny Cove Fruit Farms. The property is located at 6801 Grand Avenue west of 66th Street West and south of the A-1 Subdivision. The property is zoned Residential-15,000 and is bordered on the north and east by Residential-15,000 zoning and bordered on the south by Agriculture Open Space zoning. The subject property is bordered on the west by the zoning jurisdiction boundary and property west, northwest and southwest are not restricted by zoning regulations. The Sunny Cove Fruit Farms is an agricultural and low density residential subdivision. Existing businesses southwest and west of the subject property include warehouses, mini-storage warehouses, iron works, television and cable broadcasters and other small businesses. Five new residential subdivisions have been approved to the east and north of the subject property.

Planning staff has reviewed this application and is recommending denial. Before approving a special review use, the Zoning Commission shall find that the contemplated use complies with all requirements of this Resolution; is consistent with the objectives and purposes of the County Zoning Regulations and the Growth Policy; and is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

The proposed use does not fit in with the existing residential and agricultural uses on the neighboring properties and in the area. The proposed use does not comply with the Yellowstone County and City of Billings Growth Policy in the following areas:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns. Allowing the expansion of the existing nonconforming auto wrecking facility would not be consistent with the neighborhood character and land use patterns in the area. This area includes single-family residential zoning and uses and agricultural zoning and uses. The neighborhood is also on the zoning jurisdiction boundary and there are businesses and warehouses located in this unzoned area although they do not represent the predominant land use in the area.
- New developments that are sensitive to and compatible with the character of existing neighborhoods. The applicant plans to develop this property for one of the most intense uses allowed in the Controlled Industrial zoning district. All of the property surrounding the subject property is zoned for less intense uses. Even if some buffering is done to reduce the impacts this business will have on the neighborhood, the use is not compatible with the character of this area of the County.

The County Zoning Regulations are set up to reduce conflicts between uses of properties by the types of uses that are allowed in the different zoning districts. This area of the County is zoned for residential and agricultural uses. Property immediately to the west is outside the zoning jurisdiction and several warehouse, storage and auto oriented businesses have been established. Property to the east, north and south is zoned for agriculture and residential uses. This pattern is consistent for two miles east of the subject property. At 54th Street West there is a small node of Community Commercial zoning. Property that is zoned for industrial uses is not compatible with the area.

There were no objections received prior to the Zoning Commission meeting from County departments or from the surrounding property owners.

RECOMMENDATION

Denial

Discussion:

Chairman Heinrich asked if there was anyone in attendance wishing to speak in favor of or in opposition to Special Review #301.

Applicant:

Tom Llewellyn asked for a 30 day delay of action until the BOCC hears the zone change.

Proponent:

Chairman Heinrich asked if there was anyone else in attendance wishing to speak in favor of or in opposition to Special Review #301

Opponents:

Kim Christopherson, Pederson and Hardy, PC, 1001 S 24th St West, here on behalf of three landowners in the vicinity of the property. Steve and Deborah Ott, owners of Coldstone Sub, Stacie and Stacy Wilcox owners of Lot 1, Lamm Sub, Michelle and Stan Monson, owners of tract 3. Kim Christopherson presented a photo of the property and showed the land in relation to the petition that was submitted. Buying land next to a wrecking yard is one thing but the property owners have the right to have the underlying zoning stay the same. She also feels that this property being rezoned will only for on person, the owners of A-1. The three prong spot zoning also states that the Growth Policy should be given a good deal of weight. The surrounding land owners have spoken quite clearly. Rezoning this property will have a negative effect on surrounding properties because of machine noises, barking dogs and land use. The expansion of this property will not help the quality of life for the surrounding property owners. The growth policy has an objective to improve the quality of life of the residents and the quality and appearance of the land. In the case Bowellen vs. Great Falls in 1995, land use must help the surrounding area. This would clearly be a case of spot zoning. The use is very different from the

surrounding uses, the area is small and this is special legislation. This zone change will only benefit one owner and could negatively the surrounding property owners.

Debbie Ott, 3720 Ben Hogan, owner of Coldstone Estates, she is upset because when she purchased Coldstone Estates she was not told that the land would be developing in this way. She was not told that A-1 was planning on expanding and she feels betrayed by her realtor.

Rebuttal:

The public hearing was closed at 5:10 p.m.

Discussion:

Motion:

On a motion by Commissioner Littler, seconded by Commissioner Musselman and passed by a 5-0 voice vote to hear this again on January 9, 2005 after the BOCC hears Zone Change #587 on December 27, 2005.

Item 3: Zone Change #588

Mr. Friday read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property. He said staff is forwarding a recommendation of denial. He explained the reasons for the staff decision.

REQUEST

This is a zone change request from Residential-15000 to Community Commercial on Lot 1, Block 1 of the Oxbow Subdivision. The lot is 31,752-square-feet in size. The property is located at 3233 Bitterroot Drive northeast of the Billings Heights. The planning staff is forwarding a recommendation of denial for this application.

APPLICATION DATA

OWNER:	Jerry and Donna Geney
APPLICANT:	Jerry and Donna Geney
AGENT:	Attorney Kristin Omvig, Crowley Law Firm
LEGAL DESCRIPTION:	Lot 1, Block 1, Oxbow Subdivision
ADDRESS:	3233 Bitterroot Drive
CURRENT ZONING:	Residential-15000
PROPOSED ZONING:	Community Commercial
EXISTING LAND USE:	Engine rebuilding business
SIZE OF PARCEL:	31,752 square feet

CODE ENFORCEMENT HISTORY

This property's violation of the allowed uses under the zoning regulations has been the subject of complaints filed with the County Code Enforcement Office since November of 2003. The timeline of correspondence is as follows:

November 21, 2003: County Code Enforcement Officer Colleen Schell-Berg received a complaint alleging that a commercial business that appeared to be a construction business was being operated at the property.

November 24, 2003: Schell-Berg inspected the property and found a semi trailer, back hoe, several flatbed trucks and other equipment on the property. She did not see any signs posted on the property indicating a business.

November 25, 2003: Schell-Berg sent a notice to owners Jerry and Donna Geney notifying them of the complaint against their property. The notice informed them that they needed to apply for a change in non-conforming use through a Special Review or apply for a zone change from Residential-15000 to Highway Commercial. It was determined later that the property owner could not apply for a change in non-conforming use through a Special Review because only residential uses are allowed on the property.

December 1, 2003: Schell-Berg talked on the phone with Donna Geney. Geney informed her that they were not operating a business on the property. Given this information, Schell-Berg closed the case on the property.

September 22, 2005: Schell-Berg received a complaint on the property that a commercial business was being operated in a residential zoning district on the property. Schell-Berg inspected the property on September 22 and September 29. She found no signs on the property indicating a business was being operated on the property. She also checked the phone number for the property and found it was a residentially listed number for Donna and Jerry Geney. She did not find the property address listed in the Yellow Pages for a business.

October 9, 2005: Schell-Berg noticed an advertisement in the Billings Gazette for a business called "Engines Etc." being operated at the site. The advertisement stated that the business was a "High quality engine rebuilding and automotive machine shop." The ad listed the same phone number as was listed to Donna and Jerry Geney, the address for the property and a web address. The ad stated that a new employee, Gary Glasrud, was joining the business.

October 18, 2005: Schell-Berg inspected the property and spoke with Gary Glasrud. She asked to speak with Jerry Geney who was not available. Later that day, she spoke with Jerry on the phone and informed him that a commercial business was not allowed in the R-15000 zoning district. She reported that Jerry stated that it was not residentially zoned. Schell-Berg proceeded to inform Jerry that he needed to cease operation of the business or apply for a zone change for the property. She stated that if he applied for a zone change by the November 7, 2005, deadline she would not proceed with further enforcement until the zone change process was complete.

October 20, 2005: Schell-Berg sent a written violation notice to Jerry and Donna Geney stating what she had said in the phone conversation on October 18th.

November 7, 2005: Jerry and Donna Geney applied for a zone change for the property.

APPLICABLE ZONING HISTORY

May 1988: A zone change request from Residential-15000 to Highway Commercial was denied on the subject property.

August 1978: A zone change request from Residential-15000 to Neighborhood Commercial was denied on Lot 1, Block 7 of the Oxbow Subdivision. The property is located about one half mile east along Highway 312 from the subject property.

November 2005: A zone change request from Residential 9600 to Neighborhood Commercial was withdrawn on Lot 8, Block 3 of the Sunny Slope Acreage Tracts Subdivision after the

County Zoning Commission recommended the Board of County Commissioners deny the application. The property is located about one half mile west along Highway 312 from the subject property.

CONCURRENT APPLICATIONS

None

SURROUNDING LAND USE & ZONING

NORTH:	Zoning:	Residential-15000
	Land Use:	Residential
SOUTH:	Zoning:	Highway 312, Residential-15000
	Land Use:	Residential
EAST:	Zoning:	Residential-15000
	Land Use:	Residential
WEST:	Zoning:	Bitterroot Drive, Residential-15000
	Land Use:	Residential

REASONS

This is a zone change request from Residential-15000 to Community Commercial on Lot 1, Block 1 of the Oxbow Subdivision. The lot is 31,752-square-feet in size. The property is located at 3233 Bitterroot Drive northeast of the Billings Heights. The existing metal building on the property was built in about 1976 for use as a fire station. Doug O'Donnell was the property owner at the time and operated the O'Donnell Fire Station from the property until about 1985. According to the applicants, they purchased the property from Mr. O'Donnell in 1993.

The purpose of the zoning request is to allow the applicants to operate an engine repair and rebuilding business on the property using the existing metal structure. The applicants proceeded to file this zone change application after a complaint was filed with County Code Enforcement regarding the use of the property for a commercial business and the advertising of that business, Engines Etc. in the Billings Gazette on October 9, 2005 (**See Code Enforcement History above**). In the zone change application, the applicants state that the business has been in operation on the property for the past 12 years. This appears to be in conflict with what the applicants reported to County Code Enforcement Officer Colleen Schell-Berg in December 2003 (**See Code Enforcement History above**).

The length of time the business has been in operation on the site, the location of the business on Highway 312, the location of the property on Highway 312 and the benefits the business provides to its customer are all reasons the zoning should be changed on the property, according to the applicants. The applicants also state that they do not plan to alter the structure on the site and will not cause any significant visual changes to the property. An addition was added to the structure in 2003, according to the applicants. The applicants state that the addition was approved by the State of Montana. October 1, 2003 marked the end date for the requirement by the County for building permits within the zoning jurisdiction outside the Billings City Limits. This did not eliminate the need to have new construction and additions comply with the zoning regulations. This addition was done without a building permit from the County in 2003 and the Planning and

Community Services Department staff has not found any documentation that the addition was reviewed for compliance with zoning.

The planning staff is forwarding a recommendation of denial on this application. Staff finds that Community Commercial zoning in an area that is zoned residential does not fit with the character of this area and does not support the most appropriate use of the land. Community Commercial zoning is best suited for larger properties (30 acres or more) and centrally located to serve a large market area. Community Commercial zoning allows for a variety of retail and office businesses that could locate on the property including hardware stores, nurseries, general merchandise stores, convenience stores, gasoline stations, automobile dealers, restaurants, banks, hotels and other high traffic commercial operations. Although the size of the property at 31,752-square-feet would limit some of these uses, the property does have access to municipal water which would make it easier for some types of businesses to locate on the site. In other parts of the County's zoning jurisdiction, efforts are being made to restrict commercial development to nodes at major intersections of roads where there may be limited existing commercial development and the location may warrant commercial services. This property is at the intersection of Highway 312 and Bitterroot Drive. While this may be a larger intersection than some residential street intersections, all of the property at this intersection and in surrounding area is zoned residential and is being used for residential purposes.

The improvements to Highway 312 alone do not justify changing the zoning along the roadway to commercial uses. Many of the other businesses that the applicant outlines in the application as being in the area are either outside the zoning jurisdiction to the east or within a commercial zoning jurisdiction to the west. The length of time this illegally-nonconforming business has been located on the property also does not justify a zone change as indicated by the applicant. County Code Enforcement operates on a complaint driven basis. A complaint must be filed before County Code Enforcement investigates a potential violation. The applicants' claim that this business has operated at this site illegally for more than 10 years does not make its violation any less. The zoning during the 12 years that this business has operated has been Residential-15000. Residential-15000 does not allow engine repair and rebuilding shops. Residential-15000 allows a very limited number of commercial uses that are much less intensive than engine repair.

Staff also is concerned that the uses contemplated by the applicant with this zone change may be even more intense than what is allowed in Community Commercial zoning. Thirteen of the 18 letters received by staff in support of this zone change refer to the business as either a "machine shop," doing "machine work," or refer to applicant Jerry Geney as a "machinist." Several neighbors also have suggested that the business is a machine shop. If this business is in fact conducting machining work beyond that involved in automotive engine repair and rebuilding, and would be classified as a machine shop, such a use is allowed by Special Review in the Controlled Industrial zoning district and allowed outright in the Heavy Industrial zoning district. It is not allowed in Community Commercial zoning. However, information provided by the applicant for this application indicates that the business is strictly repair and rebuilding of automobile engines.

There also is the potential for some safety concerns for traffic entering and exiting the subject property onto Highway 312 regardless of the improvements made to the Highway. Depending on the use of the property under the Community Commercial zoning district, there could be a significant amount of traffic using the property's access. The access is just north of the intersection of Highway 312 and Bitterroot Drive in this area. Planning staff recommended denial of a zone change from Residential-9600 and Residential Manufactured Home to Community Commercial on a property about half a mile west of the subject property in November 2004 partly due to similar concerns about traffic impacts and safety (**See Applicable Zoning History**).

Staff has based its findings for this zoning application on the 12 criteria for zone changes discussed below.

Significant written comment for and against this zone change request, including 18 letters in favor the zone change, two letters in opposition to the zone change, and a petitions in opposition to any zone changes along Highway 312 in this area of the County with 29 signatures on it have been received by staff. This material is being submitted to the Zoning Commission for review with the application materials and this staff report.

RECOMMENDATION

Denial

Discussion:

Chairman Heinrich asked how this came before the board.

Mr. Friday explained that he looked in to building department records but could find no permit for this property. The property was purchased in 1993 and he has received some documentation on the property. There is some confusion because of lack of documentation.

Chairman Heinrich asked when non-conforming would be come conforming.

Ms. Cromwell stated that if the property changes hands but remains exactly the same use then the property stays nonconforming.

Mr. Friday clarified the code enforcement case up to this point. When Colleen Schell-Berg checked into this property she was told that there was no commercial business was operated on the property. This year the case was reopened and the owners were told to submit for a zone change or cease operation.

Commissioner Cook asked if this property was originally R 15000.

Mr. Friday stated that this has been R 15000 the entire time.

Chairman Heinrich asked if there was anyone in attendance wishing to speak in favor of or in opposition to Zone Change #588.

Public hearing opened at 5:25 p.m.

Applicant:

Kristin Omvig, Crowley Law firm, 490 N 31st St, representing Jerry and Donna Geney. The applicants are present. The applicants are aware of protests against this petition. However, they feel that this use is appropriate for the property given the physical attributes of the parcel as well as the length of time the parcel has supported this use. Ms. Omvig presented a map and

explained some of the attributes of the property including 3 phase power, major paved arterials, chain link fencing, a water pump station for heights county water districts, Quest fiber optics station, Conoco pipeline easement. The history of this property shows that this has never been residential in nature. This property was used for 7 years as a fire station. After the fire station closed it was used for auto repair and personal storage. The Geney's purchased the property to use as an engine shop, Engines Ect. This has no industrial uses, only engines. Engines are very sensitive to dust and so the shop is cleaned daily. The engines are rebuilt on the site, however they have no fluids and the engines are never started on site. The shop is open 5 days a week 8-4. The shop doors are kept closed during all work. The engines are rebuilt on there own, not within an automobile. This building is there, it is not a new building, and it has been there over 30 years. This property has been used as a fire station and then as an engine shop. She stated that in the covenants and restrictions on this subdivision, this parcel has been exempted. This parcel has never been a residence. If this zone change is not approved then this property will remain vacant, because this property is obviously not a residential property. This property is accessed by both Heights County water district and Quest once or twice a week. This is obviously a commercial property. The applicant believes that this is the highest and best use for this property.

Jerry asked if Mr. Geney will be answering questions.

Ms. Omvig stated that he would.

Proponents:

Jerry Geney, 2252 N. Road 5, this property was purchased from the O'Donnell Fire Station. They added on to their property when it was not within zoning jurisdiction. He was told by the State that this was a HC zone. They got the building permits from the state and added on to the building. He has been the only staff of the business for the past 12 years but now they have 1 employee. He was told by County Code Enforcement that he would have to get a zone change or cease use of the property in this manner.

Commissioner Musselman asked if they are doing complete engine repair and if they are washing the engines.

Mr. Geney stated that they put the engines in an oven, using state of the art equipment, to clean the engines. They don't release any toxins into the air because the after burner purifies the air.

Vernon Zickefoose, 4627 Brookhaven Place, this is a very state of the art building. He drives by the building every day and the business is very low key and unobtrusive.

Bob Henschel, 3550 Clint Rd, also does business with the Geney's. They run a very clean operation and he agrees with everything that the Geney's attorney said.

Alfred Danks, 417 Sharon Lane, has done business with Mr. Geney for the last 25 years. All of the work that is done is clean and well done.

Ken Finnely 2024 Clubhouse Way, has been in Yellowstone County for 81 years. He takes parts to Mr. Geney and they would be in a hardship without Mr. Geney. He feels that this brings in jobs, helps the economy, and keeps a landmark. This property was never meant to be a residential property. This business pays taxes and helps the economy and every job at that station will help create other jobs.

Sonja Hanson, 4652 McGirl Rd, does business with Donna and Jerry. The volume of this business is not very large. The Geney's do very good work and run a very clean shop.

Jermey Mccune, 1512 Tillamack, agrees with the others who have spoken. They have been there 12 years and before that it was a fire station and that was commercial. This must be a commercial property, it would not work as residential. He does not feel that this property will have an affect on property values because it has been there for so long.

Bob Deicel, 751 Rimrock, agrees with what has been said. Feels that Jerry is a great asset to this community, he is keeping the environment clean, and has spent a lot of money on this business. He feels that this man has a constitutional right to run his business.

Dwaine Gabel, Huntly, MT, feels that this is one of the most high tech shops in the area and a very big asset to Billings.

Mike Gabel, Huntly, MT, agrees with what has been said.

Bob Morris 3136 Lowman Lane, does very good work and has a good clean shop.

Valrie Denks, 417 Sharon Lane, feels that these are good employers and she feels if there was a problem with this shop it should have been mentioned before the Geney's invested in the property.

Opponents:

Mark Gerber, 1436 Redwing Circle, passed out a letter to the board against Zone Change 588. This is a really nice neighborhood and one that people live in long term. The highway has been widened but that has helped the residential development in the area. He stated that they know that this is not a residence but he knows that if Engines, Ect closes then this property could be used for anything in the Community Commercial zoning. He stated that they have been using this property has been used illegally and he does not feel that a zone change is the right thing to do on this property.

Sandy Anderson, 1436 Stallion Rout, agrees with Mark Gerber.

Dean Stevenson, 1437 Redwing Circle, one of the problems that they have had is that this is the only access to their subdivision. He is concerned that if this property is allowed to become commercial then they could have a problem with access if the property became a higher use commercial than the current engine shop.

John and Patsy Norton, 1422 Hondo Way, knows that Mr. Geney does a good job with what he does. The Quest station and the Water station are a benefit to the neighborhood. He had attempted to purchase the building at one point but was told that it would not be usable as a commercial property.

Jeff Muse, 1411 Redwing Circle, stated that he has seen vehicles for sale on the property and car bodies stacked on the property. He also attempted to purchase the property but was told that the property could not be changed to commercial. He does not feel that the area is kept as clean as it could be. If the Geney's are not selling cars off of this property he would like to know who is. The intersection is dangerous, especially when it is icy.

Patsy Norton, 1422 Hondo Way, registered complaints against this property and has a problem with the fact that the business was disguised from the Code Enforcement Department.

Melody Haagenson, 1419 Redwing Circle, agrees with what has been stated and would like the commission to see that those who are opposing the use are neighbors and those who support the use are friends and business associates of the Geney's.

Rob Vickory, 1506 Oxbow, is against changing the zoning on the property for the reasons stated previously.

Vince Haagenson, 1419 Redwing Circle

Ed Randash, 1543 Redwing is opposed to the zone change. He feels that this probably started a hobby and grew into a business. His concern is that when Jerry retires what will happen to this property. These are nice homes in the area and he does not wish to see a high impact commercial use on that corner.

Cathy Steveson, 1436 Redwing Circle, stated that they did complain at the time of the expansion. They were told that they would have to prove that there is a business at that location. She has made several complaints over the years but only recently were able to prove that a business was being run out of the location.

Dan and Mary-Jane Hinckley, 1340 Redwing Circle, stated that the corner that intersects this lot is very dangerous. He is concerned that if this property changes hands it could be any type of commercial. He stated that any change in the zoning of this property would have environmental impact on the neighborhood.

Mary Jane Hinckley, 1340 Redwing Circle, feels that this would be strip development

Cathiern Nelson, 1420 Hondo Way, agrees with what has been said previously and is against the zone change.

Steve Inman 1503 Redwing Circle agrees with what has been said previously and is against the zone change.

Vicki Muus 1403 Redwing agrees with what has been said previously and is against the zone change.

Cindy Inman, 1503 Redwing Circle, agrees with everyone. She has concerns that children play in the area and the thought that this business could be attracting people who are unknown into the neighborhood.

Rebuttal:

Kristin Omvig stated that this is not a matter of rewarding illegal activity, it is using a property to the best use. This property needs to be kept productive. They Geney's wish to remain good neighbors and wish to use this property the best they can.

Discussion:

Commissioner Hurdle asked where the Geney's live.

Mr. Geney stated that they live in Huntley.

Public hearing closed at 6:25 p.m.

Motion:

On a motion by Chairman Heinrich, seconded by Commissioner Littler and passed by a 5-0 voice vote a recommendation of denial of Zone Change #588 will be forwarded to the BOCC on their meeting of December 27, 2005.

Item 4: Zone Change #589:

Ms. Wilson read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property. She said staff is forwarding a recommendation of approval. She explained the reasons for the staff decision.

REQUEST

This is a zone change request from Residential-15000 to Agricultural Open Space on Lot 116 of the Sunnycove Fruit Farm Subdivision. The 10 acres lot is generally located at 6601 Grand Avenue. The Planning staff is forwarding a recommendation of approval for this application.

APPLICATION DATA

OWNERS:	Jon and Margaret Anderson
APPLICANT:	Beth Anderson
LEGAL DESCRIPTION:	Section 36, Township 1 North, Range 24 East, Lot 116, Sunnycove Fruit Farm Subdivision
ADDRESS:	6601 Grand Avenue
CURRENT ZONING:	Residential-15000
PROPOSED ZONING:	Agricultural Open Space
EXISTING LAND USE:	Irrigated Agricultural and Pasture
SIZE OF PARCEL:	10 acres

APPLICABLE ZONING HISTORY

Zone Change #499: A zone change request from R-15000 to Agricultural-Open Space was approved for Lots 19 and 20 of the Sunny Cove Fruit Farm Subdivision, on July 7, 1998. The subject property is generally located south of Rimrock Road at 2530 66th Street West.

Zone Change #487: A zone change request from R-15000 to Agricultural-Open Space was approved for the 10-acre Lot 59 of the Sunny Cove Fruit Farm Subdivision, on February 3, 1998. The subject property is generally located at the northeast corner of 60th Street West and Colton Boulevard.

Special Review #3: A special review to allow construction of an indoor arena and other related additions was granted to the “*Saddle Club* in a Residential-9600 zoning district” on February 8, 1974.

CONCURRENT APPLICATIONS

Special Review #303

SURROUNDING LAND USE & ZONING

NORTH:	Zoning:	Residential-15,000
	Land Use:	Cold Stone Estates; large lot, single-family residential
SOUTH:	Zoning:	Agricultural Open Space
	Land Use:	Agricultural and large lot single-family residence
EAST:	Zoning:	Residential-15000
	Land Use:	Presently unoccupied residence
WEST:	Zoning:	Residential-15000 (the zoning jurisdiction boundary)
	Land Use:	Lot 115, A-1 Johnson Auto Wrecking

REASONS

The zone change from Residential-15000 to Agricultural-Open Space would allow a land use, an equestrian facility, on the 10 acres of land located at 6601 Grand Avenue, which under current zoning is not permitted. The purpose of the zoning change request is to allow the applicant to build a horse riding facility including a house, a horse barn, an indoor riding arena, an outdoor riding arena and horse pens. The business would provide riding lessons and teach the responsibilities of horse ownership.

Agricultural-Open Space zoning is fairly restrictive as to the uses it allows outright. It is a County zoning district intended to “protect and preserve agricultural lands for the performance of a wide range of agricultural functions. The intent of Agricultural-Open Space is to limit the scattered intrusion of uses not compatible with an agricultural environment; to encourage agricultural pursuits; and to protect environmental concerns.” This zoning district allows uses including accessory uses and structures associated with:

- | | |
|---|---------------------------|
| ▪ A permitted principal structure* | broadcasting* |
| ▪ Agricultural uses | ▪ Blacksmithing |
| ▪ Specific antenna support structures and | ▪ Cemeteries |
| | ▪ Private grain elevators |

- Commercial and domestic greenhouses
- Home occupation businesses*
- Commercial and non-commercial* kennels
- **Livestock** and fowl*
- Non-commercial recreation*
- **Commercial** and private* **stables**, and
- Veterinary boarding and outpatient

Agricultural-Open Space also allows single-family dwellings*, Class A* and B manufactured homes, modular homes,* and **farm tenant houses**. However, other uses in the Agricultural-Open Space zoning district are allowed only through the Special Review process. For example, auction houses and yards, commercial campground, bed and breakfasts*, Class C manufactured homes* are subject to Special Review in this zoning district. Extractive industries*, fur farms, commercial grain elevators, indoor and outdoor gun and archery ranges, landfills, commercial livestock feeding yards, lumber mills, manufactured home parks*, travel trailer parks, public parking*, **commercial recreation***, and **rodeos and indoor or outdoor roping arenas** are also subject to Special Review in an Agricultural-Open Space zoning district (27-300, Unified Zoning Regulations). Uses with marked an “*” are allowed outright or permitted by special review in both Agricultural-Open Space and Residential-15000.

Planning staff is forwarding a recommendation of approval on this application. Rezoning a 10-acre property in this area of the county to Agricultural-Open Space fits with the existing zoning and meets the intent of Agricultural-Open Space zoning as defined in the Unified Zoning Regulations. Additionally, staff finds that Agricultural-Open Space zoning would be appropriate on this property considering: (1) the Agricultural-Open Space that exists directly to the south; (2) the Residential-15000 zoning that exists to the north, east and west of the property; (3) the Agricultural-Open Space that intermingles with and borders these properties; and, (4) the subject property was previously zoned Agricultural-Open Space. Staff has based this recommendation on the 12 criteria for zone changes discussed below, that the Zoning Commission must use to evaluate the zone change request (27-1500, Unified Zoning Regulations).

RECOMMENDATION

Planning staff recommends approval of this zone change request.

Discussion:

Chairman Heinrich asked if there was anyone in attendance wishing to speak in favor of or in opposition to Zone Change # 589.

The public hearing was opened at 6:47 p.m.

Applicant:

Tom Llewellyn, 5819 Rimrock Rd. This is a new business and they chose Ag-open so that if the business were to go out of business then it would not open the property to varied uses. They are keeping their additional 10 acres at R-15,000. This land and surrounding land was purchased the idea of having a riding academy so close would allow people in the surrounding area to keep horses and allow them the ability to have a place to ride. This is a use that is hard to find in the area and that would help property values in the area.

Proponent:

Leslie Glenn 1203 Rocky Drive, came to speak on behalf of the applicant. She stated that she is number one in the number two business. She is in the waste management business. She is a professional trainer and instructor. The applicant is a very good instructor. She will be taking care of waste, disease, flies and dust control. This is a great opportunity for this community and will allow a place for children in the area to go and for people in the area to go.

Lisa Citronie, 4028 Central Ave, the horses are valuable and so to keep the horses and have a riding academy will be an attractive addition to the neighborhood.

Lynn Staton, 5343 Nibaure Road, had an equestrian center approved 15 years ago. There are many homes in the area of his center and they are very expensive homes. He feels that this doesn't hurt the property values, he feels that it might even help increase. He doesn't think that this will smell because horse manure dries quickly and does not smell. He feels that this applicant is a very high caliber of instructor and she will do well with the riding academy.

Beth Anderson, has been operating a riding academy for 3 years. They need a new location to operate her academy. She stated that she knows the concerns of the neighbors and she requires that the land and the horses are well taken care of.

Ed Lettington, 2415 70th St west, agrees with everything that has been said and feels that this will be a good buffer zone from the A-1 wrecking yard.

Cathy Brunsvold, 2636 Howard, feels that this would be a great facility to have in your community. She feels that this would be the best use of the land and she doesn't see any better use of land than having horses. She stated that Beth is a very clean business owner. She feels that this is a great opportunity for the area and that will help children of the community to become better people. Has friends that have just moved to Parker and there are huge homes in that area and the riding academy is a benefit to that neighborhood.

Jill Lettington, 2415 70th St West, the applicant gave lessons out of their barn for years. The people purchasing land in the area are buying acreage that will allow them to have there own personal horses on there land. This stable will be a benefit to all of the people in the area.

Liz Fulton, 3105 Gregory Drive, she feels that this provides a good opportunity to people in this community, especially those who wish to ride but are unable to keep horses.

Neil Schleppie, 5606 Grand Ave, their house is across from the subject property. Since the Andersons have purchased the property it has been very well taken care of. She feels that this will be a good use.

Curtis Johnson, 1908 Ave D, owns land next to the property and is in favor of the zone change. He feels this will be a good use for the land.

Paul Byorth, 3827 Mesa Rd, owns 20 acres east of this area. One of the reasons they bought the 20 acres in this area was because of the possibility that a riding academy would be in the area.

Sally Bittick, 2319 Belknap Ave, owner of Lot 117 and she has listened to the things that have been said and she is in support of this zone change. She can't think of anything better than having horses in the neighborhood.

Cicela Schwartz, 1245 S 64th St West, agrees with everything that has been said. She is very happy with what has been proposed here and this will help the area and in larger communities businesses like riding academies are a draw to potential land buyers.

Carl Anderson, 935 Burlington, agrees with everything said. The area to the south of this property is Ag-Open space. This is historically Ag land, this is a piece that could continue to be farmed. He feels that turning this into pasture land will keep dust to a minimum. This is the right type of development for the area.

Myriam Cross, 1416 18th St West, has taken lessons from Beth and trained a horse with Beth and she takes good care of the land.

Chairman Heinrich asked if there was anyone else in attendance wishing to speak in favor of or in opposition to Zone Change # 589.

Opponents:

Kim Christopherson, Pederson and Hardy, PC, 1001 S 24th St West, here on behalf of three landowners in the vicinity of the property. Steve and Deborah Ott, owners of Coldstone Sub, Stacie and Stacy Wilcox owners of Lot 1, Lamm Sub, Michelle and Stan Monson, owners of tract 3. According to the growth policy we must have predictable land use, empower neighborhood groups and she showed her map with reference to the petition of protest. Allowing this would not empower the land owners in the area. This is a business and not just pasturing the horses. This development is planned in two phases. Having two phases of development would not be supported by 20-30 lessons a week and so they are concerned about that. If the riding business fails then it would open the property to many different uses. She disagrees with the report which states that this would not affect the surrounding property values. She feels that this is an incompatible use, it would increase traffic, and lighting would disrupt the residential feel of this area. She does not feel that this is an extension of the Ag-O uses across the way. She feels that this is a use for one single person and does not benefit the surrounding property owners. The Growth policy states that there are more than 1.3 million acres of Ag-O. This is a residential area and there is plenty of Ag-O out there for use. Even though there are horses nearby, those are private, this would be a business. She feels that this will cause contention among the neighbors and this is not a buffer between A-1 and residential land owners. One disturbing use doesn't make another easier to deal with. She reiterated that the commission must look at all the uses that could be allowed in this zone. She stated that

while there are 3 criteria to find spot zoning, all 3 criteria do not have to be met. This change meets two of the three characteristics.

Debbie Ott 2037 Ben Hogan lane, is concerned that they were told that there R-15000 and then the Andersons would be allowed to be changed. They did not purchase property to live next to a property with a riding academy.

Dave Hardy, 2116 Clark, owns Hardy Boy's Sub, feels that this would have a negative effect on his property.

Michelle Munson, 1724 66th St West- is not opposed to a riding but does not feel that this is the best use for the property.

Stacy Wilcox 1812 66th St West, agrees with what has been said. She is concerned that if this does not succeed then what would happen to the land.

Rebuttal:

Tom Lewellyn commented that this land could have manufactured homes on it as zoned. This area with Ag-O and the special review would mean that any other commercial use would have to go through a Special Review. He stated that he has never denied that they were planning to use this property as a riding academy. They spent a year looking for property on the West End.

Discussion:

Ms. Cromwell clarified that this use could be allowed on this land to allow a riding academy in perpetuity if the use never changes.

Commissioner Hurdle asked about the square footage required for this type of use.

Ms. Cromwell clarified.

The public hearing was closed at 7:43 p.m.

Motion:

A motion by Commissioner Musselman to approve died due to lack of a second.

On a motion by Commissioner Littler, seconded by Chairman Heinrich, and passed with a 4-1 with Commissioner Musselman voting against, a recommendation of denial will be forwarded to the BOCC on their meeting of December 27, 2005.

Item 5: Special Review #303:

Ms. Wilson read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property. She said staff is forwarding a recommendation of conditional approval. She explained the reasons for the staff decision.

REQUEST

This is a special review application to allow a **commercial recreation**, an equestrian facility, in a Residential-15000 zoning district. The property is located at 6601 Grand Avenue on a 10-acre Lot 116, of the Sunny Cove Fruit Farm Subdivision. Planning staff is recommending approval of this application. Action on this application is based on the land uses allowed by Special Review in a Residential-15000 zoning district as dictated in the Unified Zoning Regulations (27-300).

APPLICATION DATA

OWNERS:	Jon and Margaret Anderson
APPLICANT:	Beth Anderson
LEGAL DESCRIPTION:	Section 36, Township 1 North, Range 24 East, Lot 116, Sunnycove Fruit Farm Subdivision
ADDRESS:	6601 Grand Avenue
CURRENT ZONING:	Residential-15000
EXISTING LAND USE:	Irrigated Agricultural and Pasture
PROPOSED LAND USE:	Irrigated Agricultural and Pasture
SIZE OF PARCEL:	10 acres

CONCURRENT APPLICATIONS

Zone Change #589

APPLICABLE ZONING

Special Review #3 - A special review to allow construction of an indoor arena and other related additions to the “*Saddle Club*” in a Residential-9600 zoning district was granted on February 8, 1974.

Special Review #105 - A special review to allow a commercial recreational area for motorcycles and related uses in a Residential-15000 zoning district was granted on November 14, 1980.

Special Review #189 - A special review to allow the commercial recreation of “*Zoo Montana*” in an Agricultural-Open Space zoning district was conditionally approved in July 1990.

Special Review #253 - A special review to allow a commercial recreation facility south of Story Road Oscar’s Dreamland in an Agricultural-Open Space zoning district was conditionally approved on July 9, 1999.

SURROUNDING LAND USE & ZONING

NORTH:	Zoning:	Residential-15,000
	Land Use:	Cold Stone Estates; large lot, single-family residential
SOUTH:	Zoning:	Agricultural-Open Space
	Land Use:	Agricultural and large lot single-family residence
EAST:	Zoning:	Residential-15000
	Land Use:	Presently unoccupied residence
WEST:	Zoning:	Residential-15000 (the zoning jurisdiction boundary)
	Land Use:	Lot 115, A-1 Johnson Auto Wrecking

REASONS

The applicant is requesting a special review, necessary to allow a commercial recreation land use under the Unified Zoning Regulations in a Residential-15000 zoning district. The subject 10-acre lot is legally described as Section 36, Township 1 North, Range 24 East, Lot 116, Sunnycove Fruit Farm Subdivision, and is generally located at 6601 Grand Avenue. The subject property is bordered on the north and east by Residential-15,000, on the south by Agriculture-Open Space, and on the west by Residential-15000 and the zoning jurisdiction boundary. Property west, northwest and southwest are not restricted by zoning regulations. The Sunnycove Fruit Farm Subdivision is an agricultural and low density, large-lot subdivision. Existing businesses further southwest and west of the subject property include Johnson A-1 Auto Wrecking, warehouses, mini-storage warehouses, iron works, television and cable broadcasters and other small businesses.

Planning staff has reviewed this application and is recommending **conditional approval**. **Conditional approval** of this special review would allow the applicant to build a horse riding facility including a house, a horse barn, an indoor riding arena, an outdoor riding arena and horse pens. The proposed equestrian business would provide riding lessons and teach the responsibilities of horse ownership.

Before approving a special review use, the Zoning Commission shall find that the contemplated use is consistent with the objectives and purposes of the Yellowstone County Zoning Regulations and the Yellowstone County and City of Billings 2003 Growth Policy; and is compatible with surrounding land uses or is otherwise screened and separated from adjacent land in such a way as to minimize adverse effects.

The proposed use fits with the existing agricultural and residential land uses on the neighboring properties in the area. Planning staff suggests the proposed land use complies with the Yellowstone County and City of Billings 2003 Growth Policy in the following areas:

- Predictable land use decisions that are consistent with neighborhood character and land use patterns.

Approval of this special review would provide predictable land use decisions by promoting economic development of the Westend, but without encouraging urban sprawl and, without compromising the area's rural character. The subject 10 acres would be utilized to provide a horse riding facility comprising of a house, a horse barn, an indoor and outdoor riding arena, and pens and pastures for horses, in addition to maintaining a portion of the property's historic irrigated crop growth by re-seeding it with hay. While retaining the characteristics of the surrounding large-lot neighborhoods. The property would also serve as a buffer for any residential development from Johnson's A-1 Auto Wrecking (as it abuts this property on the west).

- New developments that are sensitive to and compatible with the character of existing neighborhoods.

Overall, the area around the subject property is a mix of agricultural and large-lot uses

and the proposed business and the objective of the land use is in keeping with the character for these areas. The intended land use of this special review would not affect the agricultural activities of the surrounding area as the proposed land use continues in the area's agricultural character and tradition. Furthermore, the size of the subject property innately supports the reduction of the development density and would maintain the existing residents' pastoral quality of life.

RECOMMENDATION

The Planning staff is recommending conditional approval.

Discussion:

Chairman Heinrich asked if there was anyone in attendance wishing to speak in favor of or in opposition to Special Review #303.

Public hearing opened at 7:51 p.m.

Proponents:

Tom Llewellyn, the coverage of this property with the buildings would be about 1.7 acres. This is a 10 acre parcel. The applicant understands the need for DEQ approval for their building and septic.

Cathy Brunsvold, 2636 Howard, feels that this would be a great facility to have in your community. She feels that this would be the best use of the land and she doesn't see any better use of land than having horses. She stated that Beth is a very clean business owner. She feels that this is a great opportunity for the area and that will help children of the community to become better people. Has friends that have just moved to Parker and there are huge homes in that area and the riding academy is a benefit to that neighborhood.

Ed Lettington, 2415 70th St west, agrees with everything that has been said and feels that this will be a good buffer zone from the A-1 wrecking yard.

Myriam Cross, 1416 18th St West, has taken lessons from Beth and trained a horse with Beth and she takes good care of the land.

Neil Schleppie, 5606 Grand Ave, their house is across from the subject property. Since the Andersons have purchased the property it has been very well taken care of. She feels that this will be a good use.

J Jill Lettington, 2415 70th St West, the applicant gave lessons out of their barn for years. The people purchasing land in the area are buying acreage that will allow them to have there own personal horses on there land. This stable will be a benefit to all of the people in the area.

Beth Anderson, 2930 Waldon, has been operating a riding academy for 3 years. They need a new location to operate her academy. She is one of two certified ridding instructors in Billings and must recertify every 5 years. She has been operating a riding academy for 3 years. They need a new location to operate her academy. She stated that she knows the concerns of the neighbors and she requires that the land and the horses are well taken care of.

Cicela Schwartz, 1245 S 64th St West, agrees with everything that has been said. She is very happy with what has been proposed here and this will help the area and in larger communities businesses like riding academies are a draw to potential land buyers.

Carl Anderson, 935 Burlington, agrees with everything said. The area to the south of this property is Ag-Open space. This is historically Ag land, this is a piece that could continue to be farmed. He feels that turning this into pasture land will keep dust to a minimum. This is the right type of development for the area. Would like to state that the A-1 wrecking yard is grandfathered in and that this will be a good buffer because the lots that are adjacent to a wrecking yard will not be sellable as residential lots.

Leslie Glenn 1203 Rocky Drive, came to speak on behalf of the applicant. She stated that she is number one in the number two business. She is in the waste management business. She is a professional trainer and instructor. The applicant is a very good instructor. She will be taking care of waste, disease, flies and dust control. This is a great opportunity for this community and will allow a place for children in the area to go and for people in the area to go.

Curtis Johnson, 1908 Ave D, owns land next to the property and is in favor of the zone change. He feels this will be a good use for the land.

Lisa Citronie, 4028 Central Ave, the horses are valuable and so to keep the horses and have a riding academy will be an attractive addition to the neighborhood.

Lynn Staton, 5343 Nibaure Road, had an equestrian center approved 15 years ago. There are many homes in the area of his center and they are very expensive homes. He feels that this doesn't hurt the property values, he feels that it might even help increase. He doesn't think that this will smell because horse manure dries quickly and does not smell. He feels that this applicant is a very high caliber of instructor and she will do well with the riding academy.

Liz Fulton, 3105 Gregory Drive, she feels that this provides a good opportunity to people in this community, especially those who wish to ride but are unable to keep horses.

Paul Byorth, 3827 Mesa Rd, owns 20 acres east of this area. One of the reasons they bought the 20 acres in this area was because of the possibility that a riding academy would be in the area.

Sally Bittick, 2319 Belknap Ave, owner of Lot 117 and she has listened to the things that have been said and she is in support of this zone change. She can't think of anything better than having horses in the neighborhood.

Lauren Brunsbowl, 2636 Howard Ave, she would like to have a riding academy in this area and knowing Beth Anderson she feels that everything will be well maintained.

Public hearing closed at 4:18 p.m.

Opponents:

Kim Christopherson, Pederson and Hardy, PC, 1001 S 24th St West, here on behalf of three landowners in the vicinity of the property. Steve and Deborah Ott, owners of Coldstone Sub, Stacie and Stacy Wilcox owners of Lot 1, Lamm Sub, Michelle and Stan Monson, owners of tract 3. According to the growth policy we must have predictable land use, empower neighborhood groups and she showed her map with reference to the petition of protest. Allowing this would not empower the land owners in the area. This is a business and not just pasturing the horses. This development is planned in two phases. Having two phases of development would not be supported by 20-30 lessons a week and so they are concerned about that. If the riding business fails then it would open the property to many different uses. She disagrees with the report which states that this would not affect the surrounding property values. She feels that this is an incompatible use, it would increase traffic, and lighting would disrupt the residential feel of this area. She does not feel that this is an extension of the Ag-O uses across the way. She feels that this is a use for one single person and does not benefit the surrounding property owners. The Growth policy states that there are more than 1.3 million acres of Ag-O. This is a residential area and there is plenty of Ag-O out there for use. Even though there are horses nearby, those are private, this would be a business. She feels that this will cause contention among the neighbors and this is not a buffer between A-1 and residential land owners. One disturbing use doesn't make another easier to deal with. She reiterated that the commission must look at all the uses that could be allowed in this zone. She stated that while there are 3 criteria to find spot zoning, all 3 criteria do not have to be met. This change meets two of the three characteristics.

Debbie Ott 2037 Ben Hogan lane, is concerned that they were told that there R-15000 and then the Andersons would be allowed to be changed. They did not purchase property to live next to a property with a riding academy.

Dave Hardy, 2116 Clark, owns Hardy Boy's Sub, feels that this would have a negative effect on his property.

Michelle Munson, 1724 66th St West- is not opposed to a riding but does not feel that this is the best use for the property.

Rebuttal:

Tom Llewlyn, feels that this is well placed and will add to the value of the adjacent land.

Discussion:

Public hearing closed 8:04 pm

Motion:

On a motion by Commissioner Littler, seconded by Commissioner Musselman and passed by a 4-1 voice vote with Commissioner Hurdle voting against a recommendation of conditional approval of Special Review #303 will be forwarded to the BOCC on their meeting of December 27, 2005.

With the following additions to the Conditions:

Sign, max of 48 sq ft max height 6 ft, unlit, outside of clear vision, monument

No outside lighting except for residential lighting and security lighting, after 10 pm.

Dust mitigation, waste, and fly suppression.

Landscaping with evergreen trees, 1 per every 20 ft along the eastern boundary minimum height at planting 4 ft within 1 year of approval.

Adhere to submitted site plan

Hours of operation shall not be later than 10 pm.

Item 6: Special Review # 302:

Ms. Mattox read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property. She said staff is forwarding a recommendation of conditional approval. She explained the reasons for the staff decision.

REQUEST

This is a special review request to operate a concrete batch plant in a Controlled Industrial zone at 1046 Johnson Lane. The property is located on Certificate of Survey 402, Tract 1-A-2. Planning staff is recommending conditional approval of this application.

APPLICATION DATA

OWNER:	Gregory J. Lucht
APPLICANT:	Gregory J. Lucht
LEGAL DESCRIPTION:	Certificate of Survey 402, Tract 1-A-2
ADDRESS:	1046 Johnson Lane
CURRENT ZONING:	Controlled Industrial
PROPOSED ZONING:	Controlled Industrial
EXISTING LAND USE:	Used oil recycling and storage
SIZE OF PARCEL:	5.3 acres

CONCURRENT APPLICATIONS

None

SURROUNDING LAND USE & ZONING

NORTH:	Zoning:	Controlled Industrial & Burlington Northern Railroad (NW)
	Land Use:	Burlington Northern Railroad

SOUTH:	Zoning:	Controlled Industrial
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Land Use: Interstate 90/94

EAST: Zoning: Entryway General Commercial
Land Use: Mobile Homes

WEST: Zoning: Controlled
Land Use: Burlington Northern Railroad

REASONS

This is a special review request to operate a concrete batch plant in a Controlled Industrial zone on Certificate Survey 1046, Tract 1-A-2. The property is located at 1046 Johnson Lane. The property is zoned Controlled Industrial and is bordered on the north, west and south by Controlled Industrial and east by Entryway General Commercial. The subject property is located north of Interstate-90.

Currently, Concrete Materials of Montana is located at 1938 Johnson Lane, approximately 1 mile north of this proposed site. In October of 2000, this company applied for and was granted a special review to allow a gravel mine and batch plant on Tracts 1-A and 2-A of Certificate of Survey 1030 Amended. The new facility will allow Concrete Materials to continue providing ready mix concrete to their customers. This move will also take the current plant out of the flood plain. The applicant states that better access will be provided than the current site. The current site is gravel, the new site is paved. A permanent office will be constructed for record keeping and customer service. A shop will be constructed for minor repairs, maintenance, and vehicle parking in the winter.

The Planning Department reviewed this application and recommends conditional approval. Staff felt that this use was appropriate with the surrounding zoning and uses. .

This business is exempt from Chapter 27-1100 Landscaping by definition in Section 27-1102 C (b). The site plan meets parking requirements.

RECOMMENDATION

The Planning Department recommends conditional approval.

CONDITIONS

1. The special review approval shall be limited to Tract 1-A-2 of Certificate of Survey 402, 1046 Johnson Lane.
2. The development of the property for the concrete plant and office shall be laid out as proposed on the site plan submitted with this Special Review application.
3. All machinery involved in the production of the concrete materials shall be housed inside a building to reduce the impact of noise and vibration on neighboring properties.
4. The development will require approval of the Montana Department of Environmental Quality and the City-County Health Department for septic and well systems.
5. The proposed development shall comply with all other limitations of Section 27-613 of the Unified Zoning Regulations concerning special review uses, all landscaping

requirements specified on Section 27-1101, and all other County zoning regulations that apply.

6. The applicant shall comply with all other requirements of Section 27-613.C. of the BMCC limiting the floor area, maximum occupancy and increases in parking spaces for this application.
7. Prior to construction, the applicant will need to apply for a Zoning Compliance Permit.

Discussion:

Chairman Heinrich asked if there was anyone in attendance wishing to speak in favor of or in opposition to Special Review #302.

The public hearing was opened at 8:31 p.m.

Applicant:

Greg Lucht, 219 Lake Drive, Bozeman, owner. Approved for a concrete plant and would like to expand that use. Would be happy to answer any questions.

Proponent:

John Cox, 206 Hallowell Lane, plant manager, is in favor of the expansion and would answer any questions.

Chris Konklen, 1505 Lewis, agree, good track record with safety and this will be a safer location. This is a large employer for the Lockwood area. He feels that this is a good use and a need expansion.

Jerold Hill, 453 Shamrock, would like to see something happen on that property and is in favor of this change.

Chairman Heinrich asked if there was anyone else in attendance wishing to speak in favor of or in opposition to Special Review #302.

Opponents:

Rebuttal:

The public hearing was closed at 8:38 p.m.

Discussion:

Commissioner Hurdle asked if they need DEQ approval.
Ms. Mattox stated they did.

Motion:

On a motion by Commissioner Littler, seconded by Commissioner Cook and passed by a 5-0 voice vote a recommendation of approval of Special Review #302 will be forwarded to the BOCC on their meeting of December 27, 2005.

Other Business:

The staff presentation was delayed until January 9, 2005 meeting.
Chairman Heinrich reminded the board of the meeting on January 17, 2005 for recommendation

PUBLIC COMMENT

Chairman Heinrich asked if there was anyone else wishing to speak during the public comment portion of the meeting. **Chairman Heinrich** stated that any member of the public may be heard on any subject that is not on the agenda, and that the Yellowstone County Zoning Commission will not take any action on these items at this time, but could choose to add an item to the next meeting's agenda for discussion.

Adjournment:

The meeting was adjourned at 8:52 p.m.

Oscar Heinrich, Chairman

ATTEST:

Elizabeth Allen, Planning Clerk